

155 FERC ¶ 61,143
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 5, 2016

In Reply Refer To:
ATX Southwest, LLC
Docket No. ER15-1809-000

Troutman Sanders LLP
401 9th Street, NW
Suite 1000
Washington, DC 20004

Attention: Christopher R. Jones
Attorney for ATX Southwest, LLC

Dear Mr. Jones:

1. On February 22, 2016, you filed, on behalf of ATX Southwest, LLC (ATX Southwest) and the Missouri Public Service Commission, an Offer of Settlement and Settlement Agreement (Settlement) in the above-referenced proceeding. On May 28, 2015, ATX Southwest had filed under section 205 of the Federal Power Act (FPA)¹ for approval of a formula rate template and implementation protocols to recover costs of transmission projects it intends to develop as part of the Southwest Power Pool, Inc. (SPP) Order No. 1000 competitive solicitation process.² The Missouri Public Service Commission protested the filing, and, on September 11, 2015, the Commission set certain

¹ 16 U.S.C. § 824d (2012).

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

issues for hearing and potential settlement.³ The Settlement resolves all issues that the Commission set for hearing and settlement judge procedures.

2. On March 14, 2016, the Commission Trial Staff filed comments in support of the Settlement. On April 5, 2016, the Settlement Judge certified the Settlement to the Commission as uncontested.⁴

3. Article 3 of the Settlement provides that ATX Southwest will use a base return on equity (ROE) of 9.9 percent, effective July 27, 2015. The Settlement also provides that, with the approved 50 basis point regional transmission organization participation adder, an ROE of 10.4 percent will be incorporated into ATX Southwest's formula rate. In addition, the Settlement establishes a debt rate of 3.65 percent as the long-term debt rate for rate of return purposes in the formula rate and for the long-term and short-term debt rate calculations in the Allowance for Funds Used During Construction, until such time as ATX Southwest issues long-term debt, when the actual debt rate will be used instead. The Settlement further states that, consistent with the September 2015 Order,⁵ the tariff records included in Exhibit A to the Settlement shall be submitted in a future filing by SPP to include the formula rate and implementation protocols as part of the SPP Open Access Transmission Tariff (OATT) at the appropriate time. The Settlement at Article 4 provides, with certain agreed-upon exceptions, for a 30-month moratorium period on changes to ATX Southwest's base ROE, beginning on January 1, 2016.

4. Article 5 establishes the standard of review for any changes to the Settlement as follows:

The standard of review for any proposed changes sought by any Settling Party to the terms of this Settlement shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527 (2008), and the standard of review for any changes proposed by a non-Settling Party or the Commission acting *sua sponte* shall be the most stringent standard permissible under applicable law.

³ *ATX Sw., LLC*, 152 FERC ¶ 61,193 (2015) (September 2015 Order).

⁴ *ATX Sw., LLC*, 155 FERC ¶ 63,002 (2016).

⁵ See September 2015 Order, 152 FERC ¶ 61,193 at P 88.

Because the Settlement provides that the standard of review for changes to the Settlement by a non-Settling Party or the Commission acting *sua sponte* is “the most stringent standard permissible under applicable law,” we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.

5. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s-length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association Inc. v. FERC*,⁶ however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

6. The Commission finds that the Settlement appears to be fair and reasonable and in the public interest, and it is hereby approved. The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

7. The Commission’s approval of the Settlement constitutes approval of the tariff records contained in Exhibit A thereto. When ATX Southwest is awarded a transmission project and qualifies as a Transmission Owner under the SPP OATT, ATX Southwest and SPP shall, within 30 days of that qualification, make a joint filing under section 205 of the FPA in the eTariff format required by Order No. 714,⁷ to incorporate the formula rate and protocols into the SPP OATT.

⁶ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

⁷ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

8. This letter order terminates Docket No. ER15-1809-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.